

APPEAL NO. 172522
FILED DECEMBER 6, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 26, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury on (date of injury); and (2) because the claimant did not sustain a compensable injury, she does not have disability.

The claimant appealed the ALJ's determinations as being contrary to the preponderance of the evidence and arguing further that in his Decision and Order the ALJ made a mistake of fact concerning the mechanism of the claimed injury.

The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and remanded.

The claimant, a school bus driver for the self-insured, claims to have sustained an injury while in the course and scope of her employment on (date of injury), when she stopped at a railroad crossing and pulled out a lever that turns on the hazard lights of the school bus she was driving and felt a "pop" in her left hand with pain radiating into her left elbow. In her recorded statement taken on May 18, 2017, the claimant stated:

I was turning on my flashers to stop and go over the railroad track, and I felt something pop in my hand. My hazards on this bus are the kind that you pull out on the steering wheel column, from the steering column. When I pulled them out, which I pulled out with my index finger and my middle finger, I felt something pop or shoot pain or something up towards my elbow.

Records from the claimant's initial medical examination at (Clinic) on May 16, 2017, record her description of the injury as follows:

She states that she felt significant pain and discomfort when she reached underneath the steering wheel pulling out a turn signal lever.

The claimant has been diagnosed with left lateral epicondylitis.

The ALJ stated in the Discussion section of his Decision and Order that the claimant “testified that she was returning after delivering the kids to schools, and she stopped at a railroad crossing and had to pull a lever to open the door, and she felt a pop in her left hand which caused pain shooting to the outside of her elbow.” The ALJ has misstated the claimant’s testimony in this case regarding the manner in which the claimed injury is alleged to have occurred. The claimant did not testify or argue that she sustained an injury while opening the door of the bus but rather while pulling the hazard light lever located on the left side of the steering column. We view the ALJ’s misstatement of the evidence as a material misstatement of fact. While the ALJ can accept or reject in whole or in part the evidence regarding the claimed injury, his decision in this case based upon an incorrect mechanism of injury requires that we reverse the ALJ’s determination that the claimant did not sustain a compensable injury on (date of injury), and remand this issue to the ALJ for further action consistent with this decision.

Because we have reversed and remanded the issue of compensability, we also reverse the ALJ’s determination that the claimant had no disability from May 17, 2017, to the date of the CCH, and we remand the issue of disability to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ’s determination that the claimant did not sustain a compensable injury on (date of injury), and we remand the issue of whether the claimant sustained a compensable injury on (date of injury), to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that the claimant had no disability from May 17, 2017, to the date of the CCH, and we remand the issue of disability to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of the evidence regarding the mechanism of the claimed injury. The ALJ shall consider all of the evidence and make a determination of whether the claimant sustained a compensable injury on (date of injury), and whether the claimant had disability from May 17, 2017, through the date of the CCH. The ALJ is to consider no additional evidence on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a

request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **BANGS INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**TONY TRUELOVE, SUPERINTENDENT
200 E. HALL STREET
BANGS, TEXAS 76823.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge